

procurement requirements for that fiscal year except when waived in accordance with paragraph (e) of this section.

(b) A nondefense agency is compliant with applicable procurement requirements if the procurement policies, procedures, and internal controls of the nondefense agency applicable to the procurement of supplies and services on behalf of DoD, and the manner in which they are administered, are adequate to ensure the compliance of the nondefense department or agency with—

(1) The Federal Acquisition Regulation and other laws and regulations that apply to procurements of supplies and services by Federal agencies; and

(2) Laws and regulations that apply to procurements of supplies and services made by DoD through other Federal agencies, including DoD financial management regulations, the Defense Federal Acquisition Regulation Supplement (DFARS), DoD class deviations, and the DFARS Procedures, Guidance, and Information (PGI). (The DFARS, DoD class deviations, and PGI are accessible at: <http://www.acq.osd.mil/dpap/dars>).

(c) Within 30 days of the beginning of each fiscal year, submit nondefense agency certifications of compliance to the Director, Defense Procurement and Acquisition Policy, Department of Defense, 3060 Defense Pentagon, Washington DC 20301-3060.

(d) The DoD acquisition official, as defined at 17.701, shall provide to the servicing nondefense agency contracting officer any DoD-unique terms, conditions, other related statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract. In the event there are no DoD-unique requirements beyond the FAR, the DoD acquisition official shall so inform the servicing nondefense agency contracting officer in writing. Nondefense agency contracting officers are responsible for ensuring support provided in response to DoD's request complies with paragraph (b) of this section.

(e) *Waiver.* The limitation in paragraph (a) of this section shall not apply to the acquisition of supplies and services on behalf of DoD by a nondefense agency during any fiscal year for which

the Under Secretary of Defense for Acquisition, Technology, and Logistics has determined in writing that it is necessary in the interest of DoD to acquire supplies and services through the nondefense agency during the fiscal year. The written determination shall identify the acquisition categories to which the waiver applies.

(f) Nondefense agency certifications, waivers, and additional information are available at http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html.

[77 FR 69722, Nov. 20, 2012, as amended at 78 FR 37685, June 21, 2013]

PART 18—EMERGENCY ACQUISITIONS

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AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

SOURCE: 71 FR 38248, July 5, 2006, unless otherwise noted.

18.000 Scope of part.

(a) This part identifies acquisition flexibilities that are available for emergency acquisitions. These flexibilities are specific techniques or procedures that may be used to streamline the standard acquisition process. This part includes—

(1) Generally available flexibilities; and

(2) Emergency acquisition flexibilities that are available only under prescribed circumstances.

(b) The acquisition flexibilities in this part are not exempt from the requirements and limitations set forth in FAR Part 3, Improper Business Practices and Personal Conflicts of Interest.

(c) Additional flexibilities may be authorized in an executive agency supplement to the FAR.

[71 FR 38248, July 5, 2006, as amended at 72 FR 46344, Aug. 17, 2007]

18.001 Definition.

Emergency acquisition flexibilities, as used in this part, means flexibilities provided with respect to any acquisition of supplies or services by or for an executive agency that, as determined by the head of an executive agency, may be used—

(a) In support of a contingency operation as defined in 2.101;

(b) To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; or

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(c) When the President issues an emergency declaration, or a major disaster declaration.

[71 FR 38248, July 5, 2006, as amended at 74 FR 52860, Oct. 14, 2009]

Subpart 18.1— Available Acquisition Flexibilities

18.101 General.

The FAR includes many acquisition flexibilities that are available to the contracting officer when certain conditions are met. These acquisition flexibilities do not require an emergency declaration or designation of contingency operation.

18.102 System for award management.

Contractors are not required to be registered in the System for Award Management (SAM) database for contracts awarded to support unusual and compelling needs or emergency acquisitions. (See 4.1102). However, contractors are required to register with SAM in order to gain access to the Disaster Response Registry. Contracting officers shall consult the Disaster Response Registry via <https://www.acquisition.gov> to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

[78 FR 37679, June 21, 2013]

18.103 Synopses of proposed contract actions.

Contracting officers need not submit a synopsis notice when there is an unusual and compelling urgency and the Government would be seriously injured if the agency complied with the notice time periods. (See 5.202(a)(2).)

18.104 Unusual and compelling urgency.

Agencies may limit the number of sources and full and open competition need not be provided for contracting actions involving urgent requirements. (See 6.302–2.)

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18.105 Federal Supply Schedules (FSSs), multi-agency blanket purchase agreements (BPAs), and multi-agency indefinite delivery contracts.

Streamlined procedures and a broad range of goods and services may be available under Federal Supply Schedule contracts (see Subpart 8.4), multi-agency BPAs (see 8.405-3(a)(6)), or multi-agency, indefinite-delivery contracts (see 16.505(a)(8)). These contracting methods may offer agency advance planning, pre-negotiated line items, and special terms and conditions that permit rapid response.

[71 FR 38248, July 5, 2006, as amended at 76 FR 14559, Mar. 16, 2011; 77 FR 194, Jan. 3, 2012]

18.106 Acquisitions from Federal Prison Industries, Inc. (FPI).

Purchase from FPI is not mandatory and a waiver is not required if public exigency requires immediate delivery or performance (see 8.605(b)).

[72 FR 46344, Aug. 17, 2007]

18.107 AbilityOne specification changes.

Contracting officers are not held to the notification required when changes in AbilityOne specifications or descriptions are required to meet emergency needs. (See 8.712(d).)

[73 FR 53995, Sept. 17, 2008]

18.108 Qualifications requirements.

Agencies may determine not to enforce qualification requirements when an emergency exists. (See 9.206-1.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.109 Priorities and allocations.

The Defense Priorities and Allocations System (DPAS) supports approved national defense, emergency preparedness, and energy programs and was established to facilitate rapid industrial mobilization in case of a national emergency. (See Subpart 11.6.)

[73 FR 21785, Apr. 22, 2008]

18.110 Soliciting from a single source.

For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one

source under certain circumstances. (See 13.106-1(b).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.111 Oral requests for proposals.

Oral requests for proposals are authorized under certain conditions. (See 15.203(f).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.112 Letter contracts.

Letter contracts may be used when contract performance must begin immediately. (See 16.603.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.113 Interagency acquisitions.

Interagency acquisitions are authorized under certain conditions. (See Subpart 17.5.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.114 Contracting with the Small Business Administration (The 8(a) Program).

Contracts may be awarded to the Small Business Administration (SBA) for performance by eligible 8(a) firms on either a sole source or competitive basis. (See Subpart 19.8.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.115 HUBZone sole source awards.

Contracts may be awarded to Historically Underutilized Business Zone (HUBZone) small business concerns on a sole source basis. (See 19.1306.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.116 Service-disabled Veteran-owned Small Business (SDVOSB) sole source awards.

Contracts may be awarded to Service-disabled Veteran-owned Small Business (SDVOSB) concerns on a sole source basis. (See 19.1406.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.117 Awards to economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program.

Contracts may be awarded to EDWOSB concerns and WOSB concerns eligible under the WOSB Program on a competitive basis. (See subpart 19.15.)

[76 FR 18309, Apr. 1, 2011, as amended at 77 FR 12916, Mar. 2, 2012]

18.118 Overtime approvals.

Overtime approvals may be retroactive if justified by emergency circumstances. (See 22.103–4(i).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007. Redesignated at 76 FR 18309, Apr. 1, 2011]

18.119 Trade agreements.

The policies and procedures of FAR 25.4 may not apply to acquisitions not awarded under full and open competition (see 25.401(a)(5)).

[72 FR 46344, Aug. 17, 2007. Redesignated at 76 FR 18309, Apr. 1, 2011]

18.120 Use of patented technology under the North American Free Trade Agreement.

Requirement to obtain authorization prior to use of patented technology may be waived in circumstances of extreme urgency or national emergency. (See 27.204–1.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007, as amended at 72 FR 63049, Nov. 7, 2007. Redesignated at 76 FR 18309, Apr. 1, 2011]

18.121 Bid guarantees.

The chief of the contracting office may waive the requirement to obtain a bid guarantee for emergency acquisitions when a performance bond or a performance bond and payment bond is required. (See 28.101–1(c).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007. Redesignated at 76 FR 18309, Apr. 1, 2011]

18.122 Advance payments.

Agencies may authorize advance payments to facilitate the national defense for actions taken under Public Law 85–804 (see Subpart 50.1, Extraor-

dinary Contractual Actions). These advance payments may be made at or after award of sealed bid contracts, as well as negotiated contracts. (See 32.405.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007, as amended at 72 FR 63029, Nov. 7, 2007. Redesignated at 76 FR 18309, Apr. 1, 2011]

18.123 Assignment of claims.

The use of the no-setoff provision may be appropriate to facilitate the national defense in the event of a national emergency or natural disaster. (See 32.803(d).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007. Redesignated at 76 FR 18309, Apr. 1, 2011]

18.124 Electronic funds transfer.

Electronic funds transfer payments may be waived for acquisitions to support unusual and compelling needs or emergency acquisitions. (See 32.1103(e).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007. Redesignated at 76 FR 18309, Apr. 1, 2011]

18.125 Protest to GAO.

When urgent and compelling circumstances exist, agency protest override procedures allow the head of the contracting activity to determine that the contracting process may continue after GAO has received a protest. (See 33.104(b) and (c).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007. Redesignated at 76 FR 18309, Apr. 1, 2011]

18.126 Contractor rent-free use of Government property.

Rental requirements do not apply to items of Government production and research property that are part of a general program approved by the Federal Emergency Management Agency and meet certain criteria. (See 45.301.)

[71 FR 38248, July 5, 2006, as amended at 72 FR 27384, May 15, 2007. Redesignated at 72 FR 46344, Aug. 17, 2007. Redesignated at 76 FR 18309, Apr. 1, 2011]

18.127 Extraordinary contractual actions.

Subpart 50.1 prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 (50 U.S.C. 1431-1434). This includes—

(a) Amending contracts without consideration (see 50.103-2(a));

(b) Correcting or mitigating mistakes in a contract (see 50.103-2(b)); and

(c) Formalizing informal commitments (See 50.103-2(c)).

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007, as amended at 72 FR 63030, Nov. 7, 2007. Redesignated at 76 FR 18309, Apr. 1, 2011]

Subpart 18.2—Emergency Acquisition Flexibilities

18.201 Contingency operation.

(a) *Contingency operation* is defined in 2.101.

(b) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See 2.101 and 13.201(g).)

(c) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See 2.101.)

(d) *SF 44, Purchase Order-Invoice-Voucher*. The normal threshold for the use of the SF 44 is at or below the micro-purchase threshold. Agencies may, however, establish higher dollar limitations for purchases made to support a contingency operation. (See 13.306.)

(e) *Test program for certain commercial items*. The threshold limits authorized for use of the test program may be increased for acquisitions to support a contingency operation. (See 13.500(e).)

18.202 Defense or recovery from certain attacks.

(a) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from nuclear,

biological, chemical, or radiological attack. (See 2.101.)

(b) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See 2.101.)

(c) *Commercial items to facilitate defense and recovery*. Contracting officers may treat any acquisition of supplies or services as an acquisition of commercial items if the head of the agency determines the acquisition is to be used to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack. (See 12.102(f)(1) and 13.500(e).)

(d) *Test program for certain commercial items*. The threshold limits authorized for use of the test program may be increased when it is determined the acquisition is to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See 13.500(e).)

18.203 Emergency declaration or major disaster declaration.

(a) *Disaster or emergency assistance activities*. Preference will be given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Preference may take the form of local area set-asides or an evaluation preference. (See 6.208 and Subpart 26.2.)

(b) *Ocean transportation by U.S. flag vessels*. The provisions of the Cargo Preference Act of 1954 may be waived in emergency situations. (See 47.502(c).)

[71 FR 38248, July 5, 2006, as amended at 72 FR 46344, Aug. 17, 2007; 72 FR 63086, Nov. 7, 2007; 76 FR 18309, Apr. 1, 2011]

18.204 Resources.

(a) *National Response Framework*. The National Response Framework (NRF) is a guide to how the Nation conducts all-hazards response. This key document establishes a comprehensive, national, all-hazards approach to domestic incident response. The Framework identifies the key response principles,

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roles and structures that organize national response. It describes how communities, States, the Federal Government, the private-sector, and non-governmental partners apply these principles for a coordinated, effective national response. It also describes special circumstances where the Federal Government exercises a larger role, including incidents where Federal interests are involved and catastrophic incidents where a State would require sig-

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nificant support. The NRF is available at <http://www.fema.gov/emergency/nrf/>.

(b) *OFPP Guidelines*. The Office of Federal Procurement Policy (OFPP) “Emergency Acquisitions Guide” is available at http://www.whitehouse.gov/sites/default/files/omb/assets/procurement_guides/emergency_acquisitions_guide.pdf”.

[71 FR 38248, July 5, 2006, as amended at 72 FR 46344, Aug. 17, 2007; 74 FR 52860, Oct. 14, 2009; 76 FR 14572, Mar. 16, 2011]